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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,153	04/20/2005	Walter Messier	GENO20031PCTUS	2031
25871 7590 01/02/2008 SWANSON & BRATSCUN, L.L.C. 8210 SOUTHPARK TERRACE LITTLETON, CO 80120			EXAMINER ARCHIE, NINA	
			ART UNIT 1645	PAPER NUMBER
			MAIL DATE 01/02/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/532,153

Applicant(s)

MESSIER, WALTER

Examiner

Nina A. Archie

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 1-5 and 11-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 9/22/2005.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Priority

1. Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged.

Drawings

2. The drawings in this application have been accepted. No further action by Applicant is required.

Information Disclosure Statement

3. The information disclosure statement filed on 9/22/2005 has been considered. An initialed copy is enclosed.

Election/Restrictions

4. Applicant's election without traverse of Group II claims 6-10 is acknowledged.

Claims 1-5, 11-13 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected group (Group I claims 1-5), (Group III claim 11), (Group IV claim 12), (Group V claim 13), there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement on 9/27/2003.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

5. Claim 6, and all dependent claims 8-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 6, and all dependent claims 8-10; the independent claim recites the phrase "substantially". However, neither the claim nor the specification clearly defines nor sets forth the meaning or means to assess "substantially". Therefore, the skilled artisan would not be readily apprised of the metes and bounds of "substantially" nor how to assess such. It is unclear how to interpret what is considered "substantially" and inasmuch as it is not a recognized term and not defined in the specification.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 6-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Schwartz et al WO 00/77204.

Claims 6-10 are drawn to a method of identifying a therapeutic agent that reduces sensitivity to Gram-negative bacterial infection, comprising: (a) contacting candidate agents with human TLR4 polypeptide; and (b) identifying a therapeutic agent that interacts with the TLR4 polypeptide to substantially reduce sensitivity to Gram-negative bacterial infection.

Schwartz et al teach a method of identifying a therapeutic agent that reduces sensitivity to Gram-negative bacterial infection, comprising: (a) contacting candidate

agents with human TLR4 polypeptide; and (b) identifying a therapeutic agent that interacts with the TLR4 polypeptide to substantially reduce sensitivity to Gram-negative bacterial infection (see claims 16, 23, 25, 28), wherein said interaction with TLR4 polypeptide occurs at Asp299, (see pg. 3 last paragraph and pg. 4), wherein said substantial reduction in sensitivity to Gram-negative bacterial infection is determined by an indicator substantial reduction in host systemic inflammatory response to LPS in a human or non-human primate (see .

Schwartz et al teach a method for treating sepsis, in a primate, comprising: administering to a primate in need thereof an effective dose of a therapeutic agent identified according to the method of claim 6 (see pg. 13 lines 10-20, pg. 26 lines 10-30).

Schwartz et al teach a method for treating asthma in a primate, comprising: administering to a primate in need thereof an effective dose of a therapeutic agent identified according to the method of claim 6 (see pg. 5 lines 15-18, pg. 26 lines 10-30).

Status of the Claims

7. Claims 6-10 are rejected.
No claims are allowed.

Conclusion

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nina A. Archie whose telephone number is 571-272-9938. The examiner can normally be reached on Monday-Friday 8:30-5:00p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner supervisor, Shanon Foley can be reached on 571-272-0898. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Nina A Archie

Examiner

GAU 1645

REM 3B31



MARK NAVARRO
PRIMARY EXAMINER